

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THE 25TH DAY OF MAY 1998

BEFORE:

THE HON'BLE MR.JUSTICE H.RANGAVITTALACHAR

H.R.R.P.NO.578.93

Ganesh Vasunder Kamath
since deceased by L.Rs.

a) Smt.Shantha
w/o late Ganesh Kamath

b) Vinod,
s/o Ganesh Kamath

c) Avinash
s/o Ganesh Kamath

All are r/o Honavar Town,
U.K.District. Petitioners

(By Sri C.B.Srinivasan)

-vs-

Sri V.Ayappan,
since deceased by L.R.
Smt.Pushpavalli,
w/o late Ayappan,
r/o near Police lines,
Honavar taluk,
U.K.District. Respondent

(By Srri M.Kumar)

This civil revision petition is filed under Section 115 of the Code of Civil Procedure against the order dated 27.1.93 passed in Revision Rent No.31/87 on the file of the District Judge, Karwar allowing the revision petition and setting aside the order dated 26.10.87 passed in HRC No.6/85 on the file of the Principal Munsiff, Honavar.

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This revision petition coming on for hearing this day, the court made the following:

ORDER

The petitioner herein filed an eviction petition against the respondent on the file of the Munsiff, Honavar on the ground that he wants the shop to do hard-ware business, (development and expansion), with his two sons under the name and style M/s V.B.Kamath and Sons at Honavar. By development and expansion of the business petitioner meant manufacturing of hard-ware material, its maintenance and putting up show-room. The premises consists of an old building surrounded by vacant land.

This petition was resisted by the respondent tenant denying the petition averments. The parties went to trial on the basis of the pleadings and led evidence. In so far as the petitioner is concerned he has examined himself as PW.1 and in support of his case he has produced six documents. In so far as the respondent is concerned, he

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examined himself as RW.1 and in support of his case produced as many as seven documents. The learned Munsiff after appreciating the evidence led by the parties has held that the petitioner has proved that he wants to demolish the petition schedule premises and wants to put up multistoried complex for the purpose of expanding the hard-ware business. The learned Munsiff also held that the respondent was using the premises when he was working at Honavar,^L Since he has retired from service the probability of his continuing to stay at Honavar is remote. Even otherwise with little effort the respondent will be able to secure an alternative building. Per contra the petitioner if he is denied eviction order for all times to come he will not be able to expand his business. He therefore held that the petitioner will suffer greater hardship. The learned Munsiff also held that having regard to the facts and circumstances of the case partial eviction will not be feasible.

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This order of the learned Munsiff was challenged before the learned District Judge. The learned District Judge has reversed the order of the learned Munsiff solely on the ground that the requirement of the petitioner can be met by he constructing a multistoried complex in the adjacent vacant space and there is no necessity of disturbing the respondent-tenant. In that view he dismissed the eviction petition. Aggrieved by the said order the landlord-petitioner has preferred this petition.

Sri C.B.Srinivasan learned counsel appearing for the petitioner submitted that the learned District Judge has committed an error in holding that the requirement of the petitioner can be met by, he constructing a multistoried complex in the adjacent vacant land. According to him the defenite case of the petitioner as stated by him in his evidence is that the premises together with the adjacent vacant land in all measures eight guntas and he proposes to put up a

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multistoried complex in the entire extent of land. This evidence has been completely ignored by the learned District Judge.

Sri M.Kumar learned counsel appearing for the respondent-tenant in answer submitted that this court cannot reappreciate the evidence in exercise of the jurisdiction under Section 115 of the Code of Civil Procedure. The findings of the learned District Judge being based on evidence which cannot be interfered however erroneously the learned District Judge might have appreciated the evidence.

I have gone through the order of the learned Munsiff and the learned District Judge and also the evidence. PW.1 who has been examined on behalf of the petitioner has stated in answer to a question put by the tenant in cross-examination as follows:-

"That the premies together with the vacant space surrounding it measures 8 guntas. I intend to approximately put up construction in 6 guntas of land".

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This evidence if taken into consideration establishes that the petitioner intends to put up the multistoried complex in the entire land including the schedule building.

This evidence is not seriously controverted by the respondent in his evidence. The learned District Judge in his order has nowhere adverted to this evidence. He merely proceeds to hold on the basis of Exhibit P.6-the plan prepared by the petitioner to prove his case, that there is vacant space surrounding the petition schedule premises where the petitioner can construct a multistoried complex to suit his need. The learned District Judge similarly does not even discuss having regard to Exhibit P.6 what exactly is the dimension of the multistoried complex suppose to be constructed by the petitioner and whether having regard to the accessibility to the main road there is enough vacant space besides the petition schedule premises where he can construct. In my view the learned

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District Judge has committed an error of record in completely ignoring the relevant evidence in the case while coming to the conclusion that the requirement of the petitioner can be met by putting up a multistoried complex in the vacant space adjacent to the petition schedule premises.

In so far as the contention of Sri Kumar that this court in exercise of the jurisdiction under Section 115 of the Code of Civil Procedure should not interfere with the findings of the learned District Judge it is no doubt true that this court cannot disturb the findings of fact however erroneous they may be but if the court below come to a conclusion ignoring the relevant piece of evidence or relying on irrelevant material that is certainly a ground under which this court can interfere under Section 115 of the Code of Civil Procedure. As held by me above when the evidence of the petitioner is clearly to the effect that the proposed multistoried complex he intends to construct will encompass not merely the

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petition schedule premises but the surrounding vacant space ignoring such an evidence and coming to a conclusion not based on evidence that the requirement of the landlord can be met by putting up a construction in the adjacent vacant land is certainly jurisdictional error which can be corrected by this court.

In so far as comparative hardship that may be suffered by the petitioner and the respondent-tenant is concerned as has been held by the learned Munsiff the respondent is a native of Kerala and has been transferred to Honavar in his official capacity. He is retired from his service it is but natural and reasonable for such a person to go back to Kerala unless there is evidence that he intends to stay permanently in Honavar. The learned Munsiff has also held that there is evidence on record to show that in Honavar it is possible to secure an alternative premises with little difficulty. The learned District Judge has completely ignored these findings and the

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evidence on record. Hence for the reasons stated above the order of the learned District Judge is set aside and that of the learned Munsiff is upheld. Consequently the eviction petition filed by the petitioner is allowed.

At this stage the learned counsel appearing for the respondent-tenant prayed for three years time to vacate the premises.

The learned counsel appearing for the petitioner-landlord opposed for grant of any time beyond one year.

It has now transpired that the respondent is dead and his widow has come on record. Having regard to the facts and circumstances of the case two and a half years time is granted to the respondent to quit and deliver vacant possession of the premises to the landlord subject to the following conditions:

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1. That the respondent shall file an affidavit undertaking to voluntarily vacate the premises.

2. That the affidavit shall be filed within 8 weeks from today after serving a copy on the otherside.

3. That respondents shall pay the monthly rents as and when it falls due.

4. That respondent shall not sub-let or sub-lease the premises.

Sd/-
JUDGE

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